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# Contracts -- Exclusive Agency -- Requirement as to Definiteness

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cially when the law in the particular situation, as here, has not already been cast in a fixed mould. As early, at least, as the 1700's that course had the approval by conduct of so eminent a jurist as Lord Mansfield<sup>30</sup> and there have been noteworthy examples ever since. If the court in the instant case had followed that practice it is believed a different conclusion would have been reached. At least in the case of standard forms of negotiable instruments bearing printed seals clearly described as such at the end of the signing lines, the intent of the signer thereon ought to be regarded as sufficiently evident to require no jury finding. Whether a like rule ought to apply to a printed "(L. S.)" in a like place is somewhat more doubtful because of the element of ambiguity but it may be noted for what it is worth that a limited inquiry among intelligent laymen shows a considerable impression that such an insignia, so placed, means "Legal Seal."<sup>31</sup>

The General Assembly would be well occupied at its next session in devoting some time to taking up anew the whole problem of seals and sealed instruments, including those of corporations, and declaring an appropriate state policy for the present day.

M. S. B.

### Contracts—Exclusive Agency—Requirement as to Definiteness.

In an action for breach of contract plaintiff alleged an offer by defendant automobile manufacturer to grant plaintiff an exclusive sales agency if plaintiff succeeded in raising \$40,000 additional capital. After plaintiff had raised the \$40,000 by a sale of its stock, defendant refused to perform. *Held*, on demurrer, that the agreement was too indefinite and uncertain to be enforced.<sup>1</sup>

The increasing prevalence of exclusive sales agencies as a means of distributing manufactured products creates new problems which test the usefulness of old common law rules of contract. The familiar formula that to be enforceable an agreement must be reasonably definite and certain,<sup>2</sup> fails as an instrument of predictability. The types of agreements which will be given or denied legal effect can be ascertained only by a close examination of the provisions of agreements involved in the cases where the formula is applied.<sup>3</sup> Parties may enter into an enforceable

<sup>30</sup> See CAMPBELL, LIVES OF THE CHIEF JUSTICES (1899) 120, note.

<sup>31</sup> If this notion is widespread enough, it should make no difference that it is historically erroneous.

<sup>1</sup> *Jordan v. Buick Motor Co.*, 75 F. (2d) 447 (C. C. A. 7th, 1935).

<sup>2</sup> *Ford Motor Co. v. Kirkmyer Motor Co.*, 65 F. (2d) 1001 (C. C. A. 4th, 1933) (Amount of goods not specified); 1 WILLISTON, CONTRACTS (1920) §37; RESTATEMENT, CONTRACTS (1932) §32.

<sup>3</sup> *Oakland Motor Car Co. v. Indiana Automobile Co.*, 201 Fed. 499 (C. C. A. 7th, 1912) (Model and price of cars not stated in agreement, but locality and time

skeleton agreement, with details to be filled in during the course of performance,<sup>4</sup> if the agreement may be tested by an objective standard in the event of a subsequent dispute as to terms.<sup>5</sup> However, if it appears that matters of substance have been left for future negotiations, recovery is usually denied upon the ground that, where the parties have not come to a "meeting of the minds," the courts will not impose upon them a contract they have not made.<sup>6</sup> A contract may be upheld as to some matters, and denied legal effect as to others on the ground of indefiniteness.<sup>7</sup>

In the modern business world it would seem to be almost a necessity that parties to complicated sales agency contracts should not only come to an agreement on such matters as quantity, sales price, commissions, duration, expenses, *etc.*, but should also incorporate such items into the written instrument as a means of guiding their performance during the life of the agreement, as well as to reduce the possibility of future litigation.<sup>8</sup> Detail would seem to be the rule rather than the exception. A skeleton agreement invites trouble. Courts operating on the

stated); *Nebraska Aircraft Corporation v. Varney*, 282 Fed. 608 (C. C. A. 8th, 1922) (Definite in number but indefinite as to price and models); *Wakem & McLaughlin Inc. v. Culver*, 28 F. (2d) 942 (C. C. A. 6th, 1928) (Customer's agreement to furnish manufacturer materials for gloves, limiting invoices to 5,000 dozen pairs weekly, and requiring manufacturer's expansion to that capacity did not bind customer to furnish materials for definite quantity); *Marble v. Standard Oil Co.*, 169 Mass. 553, 48 N. E. 783 (1897) (Agreement for defendant to sell oil cheaply enough for plaintiff to compete in territory held too indefinite); *Jackson v. Alpha Portland Cement Co.*, 122 App. Div. 345, 106 N. Y. S. 1052 (3d Dept. 1907); *Brandenstein v. McGrann-Reynolds Fruit Co.*, 56 N. D. 201, 216 N. W. 576 (1927) (Uncertain as to price, quantity; territory not clearly defined, and commissions indefinite).

<sup>4</sup> *Southwest Pipe Line Co. v. Empire Natural Gas Co.*, 33 F. (2d) 248 (C. C. A. 8th, 1929); *Kirkley v. F. H. Roberts Co.*, 268 Mass. 246, 167 N. E. 289 (1929) (Territory of sales agent depended upon future action).

<sup>5</sup> *McIlmoil v. Frawley Motor Car Co.*, 190 Cal. 546, 213 Pac. 971 (1923) (Model and price of new car not definite but could be rendered definite by evidence *aliunde*); *Varney v. Ditmars*, 217 N. Y. 223, 233, 111 N. E. 822, 826 (1916) (Dissenting opinion of Cardozo, J.).

<sup>6</sup> ANSON, *CONTRACTS* (Corbin's 5th Am. ed. 1930) §55; see (1915-1916) 3 VA. L. REV. 640; (1915-1916) 14 MICH. L. REV. 600.

<sup>7</sup> *Coca-Cola Bottling Co. v. Coca-Cola Co.*, 269 Fed. 796 (D. Del. 1920) (Contract not definite as to time and quantity but large expenditures made and contract was held good); *E. I. DuPont De Nemours & Co. v. Claiborne-Reno Co.*, 64 F. (2d) 224 (C. C. A. 8th, 1933) (Agreement making plaintiff sole state distributor of manufacturer's products not void for uncertainty as to quantity); *McCall Co. v. Icks*, 107 Wis. 232, 83 N. W. 300 (1900) (Number depended upon seller's business and therefore in the contemplation of the parties).

<sup>8</sup> *Oakland Motor Car Co. v. Indiana Automobile Co.*, 201 Fed. 499 (C. C. A. 7th, 1912), cited note 3, *supra*; *Ford Motor Co. v. Kirkmyer Co. Inc.*, 65 F. (2d) 1001 (C. C. A. 4th, 1933) (Terms and prices indefinite); *George E. Wilcox Inc. v. Shell Eastern Petroleum Products Inc.*, 283 Mass. 383, 186 N. E. 562 (1933) (No obligation imposed upon plaintiff). See *Chevrolet Motor Co. v. Gladding*, 42 F. (2d) 440 (C. C. A. 4th, 1930) for definite and detailed contract.

gradually waning *laissez-faire* theory of contract<sup>9</sup> waste little sympathy on a plaintiff who has suffered a loss as a result of his failure to insist upon anything more than a loosely drawn agreement.<sup>10</sup> However, the unfortunate plight of such plaintiffs has occasionally moved courts to grant some semblance of relief,<sup>11</sup> in view of the fact that it is usually the manufacturer who dictated the terms of the instrument to an agent of limited bargaining power who was improvidently willing to take whatever was offered him. By such devices as implying that the agreement shall endure for a reasonable time,<sup>12</sup> or that a unilateral agreement was consummated,<sup>13</sup> at least partial recompense is allowed to the agent.<sup>14</sup>

In the instant case the substantial reliance by plaintiff agent on the promise of the defendant, with its resulting disastrous loss,<sup>15</sup> gives rise to a feeling that the courts should have, if possible, overruled the demurrer. This is further substantiated by the fact that defendant's demurrer admitted plaintiff's allegation that the agreement was to be in effect for a reasonable time. The parties might have considered that

<sup>9</sup> *I.e.*, the practice of treating the parties as of equal bargaining power, a hands-off policy, in spite of actual inequality; see cases cited *supra*, note 6.

<sup>10</sup> *Ford Motor Co. v. Kirkmyer Co. Inc.*, 65 F. (2d) 1001 (C. C. A. 4th, 1933), cited note 8, *supra*.

<sup>11</sup> *Coca-Cola Bottling Co. v. Coca-Cola Co.*, 269 Fed. 796 (D. Del. 1920), cited note 7, *supra* (No inequality of bargaining power but heavy investment); *Eastern Terminal Lumber Co. v. Stitzinger*, 35 F. (2d) 333 (C. C. A. 3rd, 1928) (Dealer could recover for stock required to be purchased in seller's company); *Abrams v. George E. Keith Co.*, 30 F. (2d) 90 (C. C. A. 3rd, 1929) (Contract indefinite as to time, quantity, and price, and terminable by either party on reasonable notice. *Held*, since no notice was given, dealer was entitled to recover on his investment); *Garlock v. Montz Tire and Rubber Co.*, 192 Mich. 665, 159 N. W. 344 (1916) (Dealer could recover for tires which he had been required to purchase).

<sup>12</sup> *Abrams v. George E. Keith Co.*, 30 F. (2d) 90 (C. C. A. 3rd, 1929), cited note 11, *supra* (Contract indefinite as to time *held* to run for reasonable time); *Erskine v. Chevrolet Motor Co.*, 185 N. C. 479, 117 S. E. 706 (1923) (Dealer given exclusive agency in certain territory; indefinite as to time; treated as continuing for reasonable time).

<sup>13</sup> *Brenard Mfg. Co. v. Miller & Robinson*, 158 Miss. 892, 131 So. 274 (1930); *RESTATEMENT, CONTRACTS* (1932) §90; *CLARK, CONTRACTS* (4th ed. 1930) §10.

<sup>14</sup> *Emerson-Brantingham Co. v. Lyons*, 94 Kan. 567, 147 Pac. 58 (1915) (Expenses recovered); *Myer v. Pulitzer Publishing Co.*, 156 Mo. App. 170, 136 S. W. 5 (1911) (Contract indefinite as to time; expenses paid. *Held*, if agent makes expenditures in the matter of the agency he should have a chance to recoup them or recover from principal); *Hallstead v. Perrigo*, 87 Neb. 128, 126 N. W. 1078 (1910) (Expenses recovered).

The existing cases in North Carolina seem to go in both directions. *Thomas v. Thomasville Shooting Club*, 123 N. C. 285, 31 S. E. 654 (1898) (Where plaintiff was to build barn in consideration for receiving patronage of shooting club, expenses to be paid by club, *held* void for indefiniteness). (But see dissenting opinion of Douglas, J.). *Erskine v. Chevrolet Motor Co.*, 185 N. C. 479, 117 S. E. 706 (1923), cited note 12, *supra* (Dealer given exclusive agency in certain territory and incurred certain expenses. Contract could be canceled at will of manufacturer. *Held*, upon performance of condition, contract became clothed with valid consideration which relates back and makes the promise obligatory. Reasonable time allowed).

<sup>15</sup> The facts reveal that plaintiff was subsequently declared a bankrupt.

the agreement was a preliminary negotiation, which, upon execution, would obligate defendant to enter into a subsequent, detailed agency contract.

On the other hand, there can be little doubt that the tactics employed by plaintiff showed little business foresight. It was a corporation already engaged in the automobile business, and therefore presumably aware of the fact that it was assuming a disproportionate risk in raising \$40,000 in reliance upon a promise as indefinite as that of defendant. The situation of the parties would seem to indicate, not a substantial inequality in bargaining power, but rather foolhardiness on the part of the plaintiff. It would also seem difficult to find a basis upon which to calculate damages suffered for which the defendant should be liable.

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### Descent and Distribution—Doctrine of Worthier Title in North Carolina.

Under the doctrine of worthier title, a devise to the heir is void if he takes the same nature and quality of estate by the will that he would have taken by descent had the testator died intestate, owing to the preference of the common law for title by descent.<sup>1</sup> At common law the doctrine was a rule of law; there was no election in the heir to take by descent or by purchase, because the descent was immediately cast upon him, and the devise was considered as having no operation at all, thus forcing the heir-devisee to take by descent.<sup>2</sup> This hoary dogma arose out of the efforts of medieval landlords to preserve their feudal rights,<sup>3</sup> and of creditors of the ancestor to reach property which at that time, if taken by devise, would have been immune.<sup>4</sup> This rule was abrogated by statute in England in 1833;<sup>5</sup> it still exists in some of the

<sup>1</sup> 1 MORDECAI, LAW LECTURES (2d ed. 1916) 648; POWELL, AN ESSAY UPON THE LEARNING OF DEVISES (3d Am. ed. 1822) 284; 2 TIFFANY, REAL PROPERTY (2d ed. 1920) §487.

<sup>2</sup> University v. Holstead, 4 N. C. 289 (1812).

<sup>3</sup> Campbell v. Herron, 1 N. C. 381 (1801). Where the owner of land was permitted to devise his land, the overlord was deprived of the fruits of his seigniority, the consequence of descent.

<sup>4</sup> 1 MORDECAI, LAW LECTURES (2d ed. 1916) 648. "This rule was made for the protection of creditors, because after making bonds whereby they bound themselves and their heirs to pay money, the obligors would devise their lands to their heirs, and, as such devises constitute the heirs purchasers, so to speak, they got the land without having to pay the bond—not being liable on the bond of the ancestor except when they acquired real estate by descent from such ancestor. This pitiful evasion of an honest debt was upset by the rule above stated." It is no longer necessary to apply the rule for this purpose because present statutes make the property of the decedent liable for his debts whether devised or not.

<sup>5</sup> 3 & 4 William IV, c. 106, §3 (1833). This statute declared that when any land should be devised by a testator dying after December 31, 1833 to his heir, the devise should operate and the heir should take as devisee by purchase and not by descent as heir.